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In the Andhra Pradesh High Court

Case No : CRP No. 4095 of 1998

A. Visweswara Rao APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 29-10-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 146

Citation : (2004) 1 ACC 606 : (2005) ACJ 1517 : (2004) 1 ALD 442

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; S.A.V. Ratnam, SC, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri Manohar Reddy and Mrs. Ratnam, Counsel representing the respective parties.

2. The civil revision petition is preferred as against an order dated 20-2-1998 made in O.P. No. 6/93 on the file of Motor Accidents Claims Tribunal-cum-Additional District Judge, Anantapur.

3. The petitioner field the said O.P.No.6/93 with the following allegations:

On 18-2-1992 at about 3-30 p.m., when the petitioner was going to attend the District Munsif Court, Dharmavaram on his vehicle bearing No. ADA 4025, suddenly a dog and a cow-dog chasing the cow on the road, came across before his vehicle and he averted and turned his vehicle to the left side and hit the compound wall and then the vehicle fell down. The petitioner escaped unhurt but the vehicle was badly damaged. The front portion of the vehicle including the mudguard, handle and the front headlight, shock-absorbers, front tyre, disk and other accessories were completely damaged beyond repairs.

4. The respondent/United India Insurance Company Limited filed a written

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statement pleading that the claim for damages to the vehicle of the insured petitioner is not a third party claim. It was further pleaded that an original suit in the appropriate Civil Court should have been preferred. The amount of compensation claimed for is excessive, arbitrary and out of proportion and that the petitioner is not entitled to any amount or any portion thereof. It was further pleaded that absolutely no damages were caused to the scooter ADA 4025 and the petitioner is put to strict proof that he possessed valid driving licence at the time of accident. It was also pleaded that the respondent-Company had been unnecessarily added to the proceedings and that the respondent-company is claiming exemplary costs of Rs. 5,000/- from the petitioner. The petition itself is not maintainable and the same is liable to be rejected straight away.

5. On the strength of the above pleadings, the following Issues were settled by the Motor Accidents Claims Tribunal-cum-Additional District Judge, Ananthapur:

1. Whether the accident occurred as alleged in the petition?

2. Whether the Court has got jurisdiction to entertain the claim ?

3. hether the petitioner is entitled to any damages, if so to what amount?

4. To what relief?

On behalf of the petitioner, PW-1 was examined and Exs.A-1 to A-6 were marked. On behalf of the respondent, no oral evidence was let in, but Ex.B-1-Motor Survey Report dated 3-3-1992 alone had been marked. The learned Additional District Judge, on appreciation of the material available on record had arrived; at a conclusion that the appropriate forum to adjudicate such claim is only the Civil Court and such claim cannot be made before the Tribunal and accordingly the O.P. was dismissed. Aggrieved by the same, the present civil revision petition was preferred.

6. Heard both the Counsel on record.

7. Mrs. Ratnam, the learned Counsel representing the Insurance Company had stated that in view of the decision of this Court in United India Insurance Company Limited Vs. Y. Chandra Rao and Another, , the view expressed by the Court below is well justified and also it is in accordance with law and hence it does not warrant any interference in the present civil revision petition.

8. It is not in dispute that the petitioner filed the O.P. under Sections 140 and 166 of the Motor Vehicles Act, 1988 claiming a sum of Rs. 6,256-65 Ps. for damages caused to his Bajaj Scooter from the respondent/ United India Insurance Company Limited, Dharmavaram, represented by its Divisional Manager. PW-1, in fact had stated that on 18-2-1992 at about 3.30 p.m., while he was proceeding to District Munsif Court, Dharmavaram, a dog chasing a cow came on the road and to avert the same, he hit the compound wall and consequently the vehicle was damaged and the Insurance coverage policy is marked by him as Ex.A-5. The stand taken by the respondent/ Insurance

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Company is that the Claims Tribunals under the Act have been constituted for the purpose of adjudicating the claims in relation to compensation in respect of accidents involving the death of, or bodily injuries to persons arising out of the use of motor vehicles or damages to any property of any third party. Specific stand was taken by the respondent/ Insurance Company that the remedy before the Tribunal, in the present case, is a misconceived remedy since the petitioner is not a third party, but the owner of the damaged motor vehicle and hence he cannot claim compensation for the damages to his vehicle before the Motor Accidents Claims Tribunal under the Act.

9. In the decision referred in United India Insurance Company Limited, Cuddapah v. Y. Chandra Rao, case (supra), it was held :

"Under law, the State Government is required to constitute Motor Vehicle Accidents Claims Tribunals or Tribunals for the purpose of adjudicating upon the claims for compensation in respect of accidents involving death or bodily injury to persons arising out of use of motor vehicles or damages to property. The claims in respect of death or bodily injury or damage to pay can only be preferred by a third party which is defined u/s 145(g) of the Act to mean as to include the Government. Being an inclusive definition it should receive expanded meaning having regard to the provisions of Sections 146 and 147 which only specify persons died or receiving bodily injuries in accidents involving motor vehicles. The owner of the vehicle, whose vehicle is damaged or whose property is damaged in the accident involving motor vehicle ex fade is not covered under the provisions of Sections 146 and 147 of the Act. Therefore, it must be construed that the Tribunal constituted u/s 165 of the Act is not vested with the power to adjudicate the claims by the owners of motor vehicle and under law they are required to obtain policy of insurance covering third party risk".

In fact, the learned Judge had referred to the decision of a Division Bench in United India Insurance Co., Ltd. v. Odetimallu Bai 1995 ACJ 851 and also other decisions in M. Akkavva v. New India Assurance Co. Ltd 1988 ACJ 445 Mathew Koshy v. Oriental Insurance Co. Ltd. 1989 ACJ 21 (Ker) and The Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Shakuntala Devi, . In Dhaniraj Agarwalla v. Manorama Bai and Anr. 1989 ACJ 265 , while dealing with the aspect as to who is a third party, it was held at para 7:

"....... Third party has not been defined under the Act. Insurance is a contract between the insurer and the owner of the vehicle. They being the two parties to the contract any other person is a third party. The driver and other persons employed in the vehicle are also third parties. A third party would not be confined to person other than the occupants of the vehicle."

In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. K.P. Saradamma, , a Division Bench of Kerala High Court while dealing with the jurisdiction of Claims Tribunals u/s 110 the Motor Vehicles Act, 1939 held;

"Under Section 110 of the Motor Vehicles Act, the jurisdiction of the Claims

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Tribunals is confined to (1) claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, and/or (2) damages to any property of a third party so arising. In other words, the Tribunal has jurisdiction, apart from its power to adjudicate upon claims for compensation in respect of death or personal injury to persons, only to adjudicate upon claims for compensation in respect of accidents involving ''damages to any property'' of a third party. Therefore loss of income from a bus which was involved in an accident cannot be termed as ''damages to any property'' coming within the ambit of Section 110. Petition u/s 110 can be filed only for claiming compensation under the different heads specified and where the owner or driver of the motor vehicle or the insurer as the case may be, are liable. The proper forum for adjudicating other claims and claims against strangers, is the Civil Court."

In view of the clear legal position, I have no hesitation in holding that the learned Additional District Judge-cum-Motor Accidents Claims Tribunal, Anantapur had not committed any illegality in dismissing the O.P. on the ground of want of jurisdiction. It is needless to observe that the petitioner is at liberty to avail his other remedies, if any, in accordance with law. Except making this observation, no relief can be granted in the present civil revision petition.

10. Accordingly, the civil revision petition shall stand dismissed as being devoid of merits. Costs made easy.

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